EARTH POWER CORPORATION

IBLA 76-179 Decided February 16, 1977

Appeal from decisions of Idaho State Office, Bureau of Land Management, rejecting noncompetitive geothermal lease applications I-7990 etc.

Affirmed.

1. Geothermal Leases: Known Geothermal Resources Area-- Secretary of the Interior

   It is unnecessary for the Secretary, or his delegate, to consult with men experienced in the exploitation of geothermal steam to make a determination of a known geothermal resources area. It is sufficient that he entertain the opinion that any or all of the elements delineated in 30 U.S.C. § 1001(e) (1970), would engender a belief in such men that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose.

2. Geological Survey--Geothermal Leases: Known Geothermal Resources Area

   Authority to make determinations of known geothermal resources area has been delegated to the Geological Survey by the Secretary of the Interior. Where such determination is based upon any or all of the evidentiary factors stated 30 U.S.C. § 1001(e) and appellant does not show that the determination is in error, the determination will stand.

3. Geothermal Leases: Competitive Leases--Geothermal Leases: Known Geothermal Resources Area--Geothermal Leases: Noncompetitive Leases

   30 U.S.C. § 1003 (1970) authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a known geothermal resources area, whether the KGRA determination is made before or after a noncompetitive application is filed.

4. Geothermal Leases: Discretion to Lease--Geothermal Leases: Known Geothermal Resources Area--Geothermal Leases: Noncompetitive Leases

   Issuance of a lease for geothermal resources is within the discretion of the Secretary of the Interior. Thus, the filing of an offer for a noncompetitive lease for geothermal steam resources creates no vested rights in the offeror and the offer must be rejected if the lands are found to be within a known geothermal resources area at any time prior to the issuance of a lease.

APPEARANCES: Ronald C. Barr, President, Earth Power Corporation, and P. Thomas Thornbrugh, Esq., Tulsa, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On February 25, 1974, Earth Power Corporation filed five noncompetitive geothermal resources lease applications pursuant to the Geothermal Steam Act of 1970, 30 U.S.C. §§ 1001-1025 (1970): I-7990, I-7991, I-7992, I-7994 and I-7995. An additional application, I-8780, was filed on July 5, 1974. The Idaho State Office issued decisions on April 25 and 28, 1975, suspending the applications in part because certain land included in the applications lies within the Birds of Prey Study Area. Leases were offered for the remaining land.

Then, on July 31 and August 11, 1975, the State Office vacated the decisions of April 25 and April 28, 1975, and rejected all five applications in their entirety. The Chief, Branch of Lands and Mineral Operations, recited that the authorized officer of the United States Geological Survey, in accordance with Section 2(d) of the Geothermal Steam Act of December 24, 1970, and 43 CFR

3200.0-5, had determined the land embraced in the applications to be within the Castle Creek Known Geothermal Resources Area (KGRA) effective November 1, 1974. He therefore rejected the applications pursuant to 43 CFR 3210.4.

Appellant's contentions in its statement of reasons are summarized as follows:

1. The BLM has incorrectly interpreted the definition of KGRA as stated in the law and intended by Congress. The key word in the law is "extraction" which denotes commercial production or the actual "severing" of the resource from its environment for a commercial purpose.

2. The law states that if in the "opinion" of the Secretary of the Interior, an area is such that "men who are experienced in the subject matter" would expend money for that purpose thereon, then the Secretary may declare such area to be a KGRA. The rejection of appellant's lease was deficient because it was not accompanied by a statement of the opinion of the Secretary. Testimony of corporate executives in charge of geothermal energy is required as a basis for the Secretary's opinion.

3. Earth Power has beneficial title to the leases represented by its applications by virtue of the bona fide offer to lease and acceptance by the BLM as evidenced by the canceled checks in the proper amount of $ 1.00 per acre. By rescinding the leases retroactively, without compensation and without due process of the law, the Department of the Interior, through the BLM is causing appellant serious injury.

4. Interest expense incurred on borrowed funds, funds expended for geologic reconnaissance and evaluation and opportunity costs associated with such expenditures may be properly accounted for and do not represent project expenditures for which the benefits are subject to expropriation by the Federal government without compensation.

Appellant's first contention directs us to the statutory construction of the word "extraction." In construing a statute, it is improper to take a word from context, and attempt to determine its meaning in an isolated state as appellant suggests. United States v. American Trucking Associations, Inc., 310 U.S. 534, 542 (1940). Thus, the word "extraction" when read in context with the words "prospects for" does not denote the meaning of commercial production or actual "severing" of the resource from its environment for a commercial purpose.

[1] In response to appellant's contention regarding the "opinion" of the Secretary, 30 U.S.C. § 1001(e) (1970) does not require the Secretary to elicit the opinion of corporate experts in making his determination. Rather, it permits the Secretary or his delegate, to consider any or all of the factors listed and determine whether, in his opinion, they would "engender a belief in men who are experienced in the subject matter that the prospects for extracting geothermal steam in the area * * * are good enough to warrant expenditures of money for that purpose." Robert C. Harper, 24 IBLA 44 (1976).

[2] The authority to make KGRA determinations has been delegated to the Geological Survey by the Secretary of the Interior. 220 DM 4.1(H). In response to appellant's contention, the Geological Survey has submitted the minutes of the Mineral Land Evaluation Committee which discusses the geologic factors and considerations used to support the identification of the Castle Creek KGRA in accordance with 43 CFR 3200.0-5. The minutes analyze the land in question in relation to the following topics: the geographic setting, the rock units, the gravity and crustal structure, the history of significant exploration and development, and the geothermal indicia. After consideration of these subjects, the committee reached the following conclusions:

> Thus, the presence of a geothermal resource underlying the proposed Castle Creek KGRA is indicated by (1) the existence of hot water wells, (2) estimated aquifer temperatures between 150 [degrees] C and 220 [degrees] C, (3) an above normal geothermal gradient, and (4) a conductive anomaly as indicated by two independent electrical resistivity surveys. Muffler (1973) gives 180 [degrees] C as the lowest reservoir temperature that can presently be utilized by steam turbines for generation of electricity. Even if the reservoir (aquifer) temperature at the proposed Castle Creek KGRA is below 180 [degrees] C, as suggested by the SiO[2] geothermometer, the subsurface temperatures are within the ranges suggested for proposed turbines using a heat exchange system involving such working fluids as isobutane and freon. The proposed Castle Creek KGRA, therefore, has the potential for future power generation, as well as for present space heating and agricultural uses.

The committee noted that since attention was first drawn to this area by the determination of competitive interest in the area as

defined in 43 CFR 3200.0-5(k)(3), it recommended that the date that such competitive interest became known, November 1, 1974, be the effective date of the KGRA determination.

Since we are satisfied that the Committee's determination that the area be designated as KGRA is based upon evidentiary factors stated in 30 U.S.C. § 1001(e) (1970) and appellant has offered no evidence to show that this conclusion is in error, the Committee's determination will stand. Anadarko Production Company, 24 IBLA 132 (1976).

[3] 30 U.S.C. § 1003 (1970) authorizes competitive bidding as the sole basis for issuance of geothermal resources leases within a KGRA and noncompetitive lease applications for such lands must be rejected whether or not filed before the KGRA determination was made. Anadarko Production Company, supra; Delta Funds, Inc., 19 IBLA 185 (1975); Hydrothermal Energy and Minerals, Inc., 18 IBLA 393, 82 I.D. 60 (1975).

[4] Appellant's theory that it has beneficial title to these leases is incorrect. The geothermal leasing statute provides that the Secretary "may" issue geothermal leases. 30 U.S.C. § 1002 (1970). Thus, it is within the discretion of the Secretary whether or not to issue a geothermal lease for a given tract of public domain land. Eason Oil Company, 24 IBLA 221 (1976). Consequently, the filing of an application for a noncompetitive geothermal lease creates no vested rights in the offeror and the offer must be rejected under 43 CFR 3210.4 if the land is found to be within a KGRA at any time prior to the issuance of a lease.

Appellant's assertion that it should be reimbursed by the Federal Government for funds expended in preparation for issuance of a lease is incorrect. The lessee and not the Government must bear the financial burdens incurred in preparing for and developing mineral production prior to the issuance of a lease. See Duncan Miller, 11 IBLA 14, 80 I.D. 322 (1973).

Appellant also contends that the rejection of the lease was contrary to the intent of the Act as to encourage small operators to participate in geothermal leasing without competing with large companies in bidding for acreage considered attractive for geothermal leasing. Appellant notes that rejection is also contrary to the country's goal for energy self-sufficiency. These arguments have no merit in light of the plain statutory mandate that competitive bidding is the sole basis for issuance of a geothermal lease for lands within a KGRA.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge